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In the Supreme Court of the United States.

OCTOBER TERM, 1974.

No. 74-1541.

BERNARD WEINSTOCK ET AL.,
APPELLANTS,

v.

TOWN OF HULL ET AL.,
APPELLEES.

ON APPEAL FROM THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS.

Motion to Dismiss or Affirm.

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BATEMAN & SLADE, INC., BOSTON, MASSACHUSETTS.

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Pursuant to Rule 16 of the Rules of the Supreme Court of the United States, Richard S. Moskow, in association with Haskell A. Lampke, Town Counsel for the Town of Hull, the Board of Assessors, and the Collector of Taxes, of the Town of Hull, Massachusetts, move for dismissal of this appeal on the ground that it does not present a substantial federal question.

Alternatively, the appellees move to affirm the decision of the Supreme Judicial Court of Massachusetts, on the ground that a rational basis supports the existence of the statute and exemption in dispute.

Statement of the Case.

The appellants maintain summer residences in the Town of Hull, but are domiciled elsewhere in the Commonwealth of Massachusetts. The Town of Hull assesses and levies upon appellants both real estate and personal property taxes. The assessment and levy of the personal property tax on household furnishings and effects of the appellants has given rise to the petition for declaratory relief in this case.

Massachusetts General Laws, c. 59, § 5, cl. 20, as most recently amended by St. 1972, c. 144, § 1, exempts certain personal property from local taxation. The statute provides as follows:

> " . . . his household furniture and effects, including jewelry, plate, works of art, musical instruments, radios, television sets and garage or stable accessories, in storage in a public warehouse . . . or used or commonly kept in or about the dwelling of which he is owner of record or for the use of which he is obligated to pay rent, *and which is the place of his domicile.*" (Emphasis added.)

Whereas the appellants are not domiciled in Hull, the Town of Hull has by virtue of this statute placed a tax on their personal property as well as that of others who maintain summer residences in Hull, or who, while domiciled in Hull, maintain other residences.

The appellants contend that, whereas domiciliaries are exempted and non-domiciliaries are not exempted from the tax in Hull, the exemption denies them equal protection of the laws, violating both the Massachusetts and Federal Constitutions.

The appellees have maintained that the statute in question is constitutional on its face and as applied to the appellants.

The Superior Court of Suffolk County found the statute constitutional. The Supreme Judicial Court of Massachusetts affirmed the judgment of the Superior Court. The appellants seek to obtain an appeal to the Supreme Court of the United States.

Argument.

The appellants contend that a substantial federal constitutional question exists in that an application of the statute, Massachusetts General Laws, c. 59, § 5, cl. 20, results in a violation of the equal protection clause of the Fourteenth Amendment. An examination of the statute will reveal that appellant's charge is unfounded.

Massachusetts General Laws, c. 59, § 5, cl. 20, applies to all persons owning property within the Commonwealth of Massachusetts. The statute exempts certain property, in this case household furnishings and effects, from taxation, if located in the domicile of the individual.

The classification created by the statute is that of domiciliaries owning personal property. All domiciliaries have the benefit of this exemption. The appellants, being domiciled in cities and towns in Massachusetts other than Hull, have the full benefit of the exemption offered by the statute, in common with other domiciliaries.

Those domiciliaries owning additional homes are subject to taxation on household furnishings and effects located in homes which are not their domicile.

Therefore, it can be seen that there is no denial of equal protection of the law in that all members of the class created

— domiciliaries — are treated equally. The appellants have been treated the same as all other domiciliaries.

This Court has previously affirmed a state's power and exercise of latitude in delineating a particular class as a subject for taxation. *Carmichael* v. *Southern Coal Company*, 301 U.S. 495, 509 (1937). The Supreme Court has continued to recognize the need of the states to have ample discretion in the levying of taxes. *Allied Stores of Ohio* v. *Bowers*, 358 U.S. 522, 526 (1959).

This Court recently dismissed for want of a substantial federal question a Massachusetts case wherein the Supreme Judicial Court upheld a state taxing statute. Any distinction in a tax statute which has a rational basis and in which all members of the class are treated equally will survive a challenge under the equal protection clause. *Frost* v. *Commissioner of Corporations & Taxation*, Mass. Adv. Sh. (1973) 389, 399-401.

Appellees submit that no substantial federal question is presented and therefore this appeal should be dismissed.

Appellees further submit to this Court that, even assuming, *arguendo*, that a federal question exists, this Court should affirm the decision appealed from, as a rational basis exists for the classification created by the statute. *Lindsley* v. *National Carbonic Gas Co.*, 220 U.S. 61, 78 (1911).

The Massachusetts legislative body, as the General Court, could in its discretion have determined that all domiciliaries should receive the benefit of an exemption from a tax on their household furnishings and effects, as, practically speaking, these items, when located in their domiciles represent necessities of life and are required for one's well-being and sustenance. However, those who maintain additional homes elsewhere and have personal property therein are maintaining a luxury which is certainly a proper subject of taxation.

The Court has recognized the need for allowing states large leeway in creating classifications in order to produce taxation systems. *Lehnhousen* v. *Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973). The General Court saw fit to create an exemption for domiciliaries, this being a rational classification to carry out a probable legislative desire to aid homemakers in providing for necessities of a normal life. Whereas this reason alone fulfills the rationality test for this challenge of the validity of the statute, further discussion is not warranted.

Conclusion.

For the reasons stated above, the Town Counsel of the Town of Hull on behalf of the appellees respectfully urges this Court to dismiss this appeal for want of a substantial federal question, or, in the alternative, to affirm the judgment of the Superior Court of the Commonwealth of Massachusetts and the decision of the Supreme Judicial Court of the Commonwealth of Massachusetts.*

Respectfully submitted,

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*The research assistance of James B. Lampke of New England School of Law is gratefully acknowledged.